

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

GIANCARLO MARTINEZ, §
§
Plaintiff, §
§
v. § CAUSE NO. 1:22-CV-00692-LY
COMMUNITY BRANDS PARENTCO. §
LLC, and YOURMEMBERSHIP COM, §
INC., §
§
Defendants. §

DEFENDANTS' COUNTERCLAIM

Pursuant to Federal Rule of Civil Procedure 13, Defendants and Counterclaim-Plaintiffs Community Brands Parentco, LLC, and Yourmembership.com, Inc. (collectively, “Defendants”) assert the following Counterclaim against Plaintiff and Counterclaim-Defendant Giancarlo Martinez (“Martinez”) and state as follows:

THE PARTIES

1. Community Brands Parentco, LLC is a limited liability company, and its member and parent companies are citizens of Delaware and Florida.
2. Yourmembership.com, Inc. is a Florida corporation.
3. Defendants’ principal places of business are located at 9620 Executive Center Drive North, Suite 200, St. Petersburg, Florida, 33702.
4. Martinez is an adult individual, who, upon information and belief, resides at 425 Southern Cross Drive, Austin, Texas, 78717.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in the Western District of Texas, Austin Division, as all actions giving rise to this matter occurred within the Western District of Texas, Austin Division, and any relevant actions occurring outside of the Western District of Texas were directed at, and caused harm in, the Western District of Texas, or will cause harm in the Western District of Texas, and Defendants have established jurisdiction under 28 U.S.C. §§ 1332, 1441, and 1446.

FACTUAL ALLEGATIONS

6. This Counterclaim arises from Martinez's failure to repay his Community Brands signing bonus, as required by the terms of his Offer Letter. *See Exhibit A*, Giancarlo Martinez Offer Letter from Community Brands, executed September 7, 2021 ("Offer Letter").

7. On September 7, 2021, Defendants offered Martinez the position of Senior Vice President of Sales. *See Complaint ¶ 9; see Exhibit A*.

8. On the same day, Martinez accepted the position and executed the Offer Letter. *Id.*

9. Martinez's position as Senior Vice President of Sales included a generous compensation package, including a \$23,000 signing bonus. *Id.*

10. The Offer Letter stated that the signing bonus must be repaid if the Company terminated Martinez's employment for *any reason* within twelve months of his start date: "**[I]f your employment with the Company terminates for any reason within 12 months of your start date, such signing bonus shall be repaid by you to the Company.**" *Id.* (emphasis added).

11. Martinez began his employment with Defendants on September 20, 2021.

12. On or about December 3, 2021, Defendants paid Martinez the signing bonus.

13. On or about February 7, 2022, Martinez was promoted to Executive Vice President of Sales.

14. On February 23, 2022, Martinez's employment was terminated due to multiple violations of company policy, including inappropriate treatment of female employees, violating the personal boundaries of a female employee, and making inappropriate comments to female employees.

15. Under the Offer Letter, Martinez was obligated to repay his signing bonus if he was terminated for any reason within twelve months of his start date of September 20, 2021.

16. Martinez was employed by Defendants for five months and three days before Defendants terminated his employment.

17. Martinez has a contractual obligation to repay his signing bonus to Defendants.

18. To date, Martinez has not repaid Defendants for any amount of the signing bonus.

COUNTERCLAIM I
BREACH OF CONTRACT

19. Defendants incorporate the allegations set forth above.

20. The Offer Letter is a valid contract between Defendants and Martinez.

21. Defendants performed their obligations under the Offer Letter, and Martinez was paid \$23,000 as a signing bonus.

22. Because he was terminated from his position at Community Brands five months and three days after his start date, Martinez must repay the entire signing bonus to Defendants.

23. Martinez has breached the terms of the Offer Letter.

24. Defendants have suffered damages because of Martinez's breach.

WHEREFORE, as to the Counterclaim, Defendants and Counterclaim-Plaintiffs respectfully request that the Court:

1. Enter judgment in favor of Defendants and against Martinez for the Counterclaim;
2. Issue an order requiring Martinez to repay the \$23,000 signing bonus;
3. Award Defendants any other declaratory, equitable, or monetary relief that the Court deems appropriate or just.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Stefanie R. Moll
Stefanie R. Moll
State Bar No. 24002870
stefanie.moll@morganlewis.com
1000 Louisiana Street, Suite 4000
Houston, TX 77002
T: 713.890.5780
F: 713.890.5001

Gabriel S. Gladstone (*pro hac vice*)
MA Bar No. 690460
gabriel.gladstone@morganlewis.com
1 Federal Street
Boston, MA 02110
T: 617.341.7700
F: 617.341.7701

Attorneys for Defendants

Dated: October 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this day, October 18, 2022, a copy of the foregoing was filed electronically and served upon all counsel of record via operation of the Court's CM/ECF System or by mail upon anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Stefanie R. Moll

Stefanie R. Moll